

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

MALEK MOHAMMAD BALOUCHZEHI,
a/k/a "Malek Khan,"

Defendant.

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JESSE M. FURMAN District Judge:

This matter came before the Court on the Government's motion (the "Government Motion"), exhibits, and the declarations of various Government officials (collectively, the "Government Submission"). The Government Submission was filed *ex parte*, *in camera*, and in coordination with the Classified Information Security Officer on February 1, 2023. The Government Submission sought a protective order, pursuant to Section 4 of the Classified Information Procedures Act ("CIPA") and Rule 16(d)(1) of the Federal Rules of Criminal Procedure, regarding disclosure of certain information. After *ex parte*, *in camera* consideration of the Government Submission, this Court finds:

1. That the Government Submission contains and describes classified information that requires protection against unauthorized disclosure. That information is described with

particularity in the Government Submission.

2. The head of the department that has control of the classified information described in the Government Submission, after actual personal consideration, has lodged the state secrets privilege with respect to that classified information.

3. Disclosure of the "Classified Materials" as that term is defined in the Government Submission to the defense or the public could reasonably be expected to cause serious damage to the national security.

4. The Classified Materials are not discoverable under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, or Rule 16 of the Federal Rules of Criminal Procedure. In addition, the Classified Materials are not helpful to the defense, that is, useful to counter the Government's case or bolster a defense, as required under *United States v. Aref*, 533 F.3d 72, 78 (2d Cir. 2008).

Accordingly, it is:

ORDERED that the Government Motion is granted, and the Classified Materials, as defined in the Government Motion and described herein, need not be disclosed to the defense; and it is further

ORDERED that the Government Submission is hereby sealed, and

shall remain preserved in the custody of the Classified Information Security Officer, in accordance with established court security procedures, until further order of this Court.

SO ORDERED in Chambers this 9th day of: February, 2023

A handwritten signature in black ink, appearing to read 'Jesse M. Furman', written over a horizontal line.

HONORABLE JESSE M. FURMAN
United States District Judge
Southern District of New York